

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CYNTHIA ROBINSON,
Plaintiff,
vs.
OSCAR GONZELES,
Defendant.

NO. CV-07-3026-AMJ

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
FIRST AMENDED COMPLAINT

1915 (g)

By Report and Recommendation filed October 22, 2007 (Ct. Rec. 24), the Honorable John L. Weinberg recommended dismissal of Ms. Robinson's "First Amended Complaint" (Ct. Rec. 17). In her initial complaint, Ms. Robinson described an incident in 2005 in which Mr. Gonzeles escorted her in his personal vehicle, provided her with his home telephone number and address, and requested she call him to arrange a sexual encounter. Plaintiff complained she had been "putting up with his sexual desires" for nearly two years. She failed, however, to present any facts from which the Court could infer Defendant Gonzeles exploited his position as a CPS worker to coerce sex with Plaintiff, or that he was acting under color of state law when he solicited Plaintiff for sex.

Plaintiff was advised of these deficiencies by Order filed August

1 7, 2007. (Ct. Rec. 15.) On August 15, 2007, the Court received an
2 uncaptioned document consisting of only two pages which Plaintiff
3 referred to as a "First Amended Complaint." (Ct. Rec. 17.) Plaintiff
4 asserted there were "factual findings of sexual abuse," and she felt
5 "obligated" to him "the whole 2 yrs." She also sought unidentified
6 injunctive relief and appeared to wish to pursue a class action. The
7 assertions contained in this document did not cure the deficiencies of
8 the initial complaint.

9 On October 29, 2007, the Court received a letter from Ms. Robinson
10 which has been construed as her "objection" (Ct. Rec. 25) to the Report
11 and Recommendation. Ms. Robinson states in this letter that she wishes
12 to "appeal" the magistrate judge's decision. As clearly stated in the
13 Report and Recommendation, a Report and Recommendation cannot be
14 appealed to the Ninth Circuit Court of Appeals. Only the decision of a
15 district court judge may be appealed.

16 Plaintiff makes no specific objection to the Report and
17 Recommendation. She merely asserts her determination to pursue her
18 claims. Without specific objections, **IT IS ORDERED** the Report and
19 Recommendation is **ADOPTED IN ITS ENTIRETY** and the First Amended
20 Complaint against Oscar Gonzeles is **DISMISSED WITH PREJUDICE** for failure
21 to state a claim upon which federal relief may be granted. 28 U.S.C. §§
22 1915(e)(2) and 1915A(b)(1). To the extent Plaintiff may have sought
23 criminal charges to be brought against Defendant Gonzeles, such claim is
24 dismissed for lack of jurisdiction.

25 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
26 who brings three or more civil actions or appeals which are dismissed as
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1 frivolous or for failure to state a claim will be precluded from
2 bringing any other civil action or appeal *in forma pauperis* "unless the
3 prisoner is under imminent danger of serious physical injury." 28
4 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory
5 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's
6 complaint may count as one of the three dismissals allowed by 28 U.S.C.
7 § 1915(g) and may adversely affect his ability to file future claims.

8 **IT IS SO ORDERED.** The District Court Executive is directed to
9 enter this Order, forward a copy to Plaintiff at her last known address,
10 enter judgment, and close the file. The District Court Executive is
11 further directed to forward a copy of this Order to the Office of the
12 Attorney General of Washington, Criminal Justice Division. **IT IS**
13 **FURTHER ORDERED** any pending motions are **DENIED** as moot.

14 **DATED** this 18th day of December 2007.

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16 S/ Edward F. Shea
17 EDWARD F. SHEA
18 UNITED STATES DISTRICT JUDGE
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